March 15, 2000

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Federal Communications Commission
445 12th Street
Room TW-A306, SW
Washington, DC 20554

Re: Public Comment in response to the FCC's Notice of Inquiry;
MM Docket No. 99-360; FCC 99-390;
Public Interest Obligations of Television Broadcast Licensees

Dear Commissioners:

I am writing in response to the Commission's Notice of Inquiry (FCC 99-390), adopted December 15, 1999. The Notice of Inquiry reveals that the Commission is currently considering whether it should re-examine the public interest obligations of television broadcast licensees, given the recent emergence of new digital television technology.

I believe the Commission should keep public interest regulation to a minimum for two primary reasons. First, digital television technology is still in its infancy and should not be subjected to the dampening effects of over regulation. Second, regulation is not necessary in those areas where the marketplace can adequately serve and protect the public interest. Please see my comments that follow this letter for a more thorough examination of my opinions and corresponding rationale.

Thank you for considering my comments. If I can be of further assistance, please contact me at the above address.

Best regards,

Kenneth R. Ozment

THE FCC SHOULD KEEP PUBLIC INTEREST REGULATION TO A MINIMUM

1. WHY MINIMAL REGULATION IS IMPORTANT

In this informational age in which we live, significant new technological advancements are occurring almost daily. These advancements touch almost every aspect and medium of electronic technology, including television. For example, in just the past year, a technology, aptly named WebTV, has been introduced into the marketplace that turns a television set into a virtual internet browser. With this new technology, like any other, no one knows for sure what its limits are or what its ultimate ramifications on the marketplace will be. While the uncertainty of the situation is not inherently troubling, it does become a problem when agencies, like the FCC, are tasked with protecting the public interest in an area where the technology has yet to be defined. Further, in the past decade, it has become clear that the boundaries of information technology may simply not be definable. Thus, it is near impossible to predict which aspects of the public interest the marketplace will adequately address, and which it will not. It is sometimes difficult to even know what the public interest truly is. As far as information technology goes, we are living in a new and different world, and we are just being to explore and discover the possibilities.

With this in mind, I believe that the time is now for the FCC to re-examine its regulation of broadcast licensees, in light of digital technology, and to specifically re-examine its concept of public interest. While I don't deny that there are public interest areas that the FCC should appropriately regulate, the FCC should be careful to limit its regulation to those core areas that are unquestionably matters of concern to the public. For example, the FCC should pursue regulation in the areas of closed captioning for the hearing impaired and disaster warning capabilities. It should be reluctant, however, to regulate in such areas as multi-casting, high-definition use requirements, or minimum programming requirements. The FCC should also not attempt to regulate programming quality or subject matter, as these areas are fraught with First Amendment obstacles. For reasons I discuss below, I urge the Commission to leave these latter categories, at least for now, to market forces.

In the Fifth Report and Order[1], the FCC gave existing broadcasters an additional channel to use while transitioning to digital television transmission; however, this gift did not come without a price. Broadcasters who receive this additional channel are, in return, obligated to build digital facilities capable of transmitting a digital signal over the channel. The FCC should be commended for its action because it is encouraging, if not downright forcing, broadcasters to embrace the development and exploration of digital television technology ("DTV"). The underlying premise behind the FCC's action, even if not stated expressly, is that the government's promotion of new technology in the private sector ultimately serves the public interest. Also, in 1997, President Clinton created the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (the "Gore" Commission).[2] The Gore Commission was tasked with the re-examination of broadcasters' public interest obligations in light of DTV. After 15 months of intensive work, the Gore Commission's Final Report was

[1] Advanced Television Systems, 12 F.C.C.R. 12,809 (1997).
[2] Exec. Order No. 13,038, 62 Fed. Reg. 12,065 (1997).

submitted to the Vice President in December 1998.[3] The Final Report's rather noncommittal list of recommendations suggests just how treacherous determining the public interest can be. The Gore Commission did, however, recognize that "federal oversight of broadcasting has had two general goals: to foster the commercial development of the industry (and new technology) and to ensure that broadcasting serves the educational and informational needs of the American people."[4] I suggest to the Commission that both of these goals define the public interest, and neither is more important than the other. Therefore, while I acknowledge the Commission's honorable efforts to protect the needs of the American people through public interest regulation, I urge the Commission to avoid promulgating nonessential regulations that are only arguably in the public interest and that may, in fact, dampen the enormous potential of DTV.

2. THE FCC'S ENABLING LEGISLATION GIVES IT THE POWER TO MINIMIZE PUBLIC INTEREST REGULATION

Since the passage of the Communications Act of 1934, the FCC has had the responsibility of ensuring that broadcast licensees operate for the benefit of the public interest.[5] The Telecommunications Act of 1996 states that "the Commission shall determine, in the case of each application…, whether the public interest, convenience, and necessity will be served…, and, if the Commission…shall find that public interest, convenience, and necessity would be served…, it shall grant such application.[6] As applied to standard television licenses, this statutory language and subsequent commentary make clear that Congress considers broadcast licensees to be trustees of a public resource (i.e., the public airwaves) and that licensees thus have an obligation, first and foremost, to serve the public interest. In addition, the Supreme Court has ruled that this delegation of power by Congress to the FCC is not so broad as to be an improper delegation of legislative authority.[7]

When Congress passed the Telecommunications Act of 1996, it, for the first time, specifically addressed broadcast licenses for digital television services.[8] In several different places in the statute, Congress references the FCC's obligation to safeguard the public interest. Section 336(a) gives the Commission authority to grant additional licenses to certain broadcasters for digital television services.[9] Section 336(b), however, requires that the Commission promulgate regulations pursuant to section 336(a) only when in furtherance of the public interest, convenience, or necessity.[10] Section 336(b) sets out four specific public interest requirements that the Commission must adhere to in executing the statute's directive, while the fifth subpart to section 336(b) simply states that "the Commission shall prescribe such other regulations as may

[3] Final Report of the Advisory Committee on Public Interest Obligations of Digital Television Broadcasters (December 18, 1998), issued pursuant to Executive Order No. 13,038, 62 Fed. Reg. 12065 (March 11, 1997) [hereinafter Final Report].
[4] Final Report, Section II: The Public Interest Standard in Television Broadcasting (December 18, 1998).
[5] Communications Act of 1934, chap.652, sect. 303; *see also* CBS, Inc. v. Democratic Nat'l Comm., 412 U.S. 94, 103 (1973).
[6] 47 U.S.C. § 309 (1999).
[7] National Broad. Co. v. United States, 319 U.S. 190, 226 (1943).
[8] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. § 151 et. seq.) (Feb. 8, 1996). This Act amended the Communications Act of 1934.
[9] 47 U.S.C. § 336(a) (1999).
[10] 47 U.S.C. § 336(b) (1999).

be necessary for the protection of the public interest, convenience, and necessity."[11] Finally, section 336(d) states that, for any new licenses granted for digital television services, "[n]othing in this section shall be construed as relieving a television broadcasting station from its obligation to serve the public interest, convenience, and necessity."[12]

From this, there can be little doubt that Congress intends the FCC to protect the "public interest, convenience, and necessity" in the granting and administration of older standard television and newer digital television broadcast licenses. In fact, Congress has granted to the FCC a rather broad domain in which to operate, with a loose public interest standard as the only significant Congressional limitation on FCC action.[13] With the FCC's authority unquestioned, the only real question left to answer is how to best define "public interest, convenience, and necessity." On this point, Congress has provided very little guidance; instead, it has delegated broad authority to the FCC to use its own discretion in the matter. With that in mind, my comment focuses solely on the FCC's current interpretation of the public interest standard and the unique opportunity the FCC now has to re-define the public interest standard in a way that will allow DTV to emerge and thrive.

3. THE FCC SHOULD REGULATE ONLY TO THE EXTENT THAT CONGRESS CLEARLY INTENDS

While the FCC has broad discretion over how the public interest is defined, the FCC still has an obligation to act in accordance with congressional intent. The FCC, like many agencies, has not always remained true to this idea. For example, Congress in 1990 passed the Children's Television Act, apparently because it believed the FCC had failed in the 1980s to adequately regulate programming for children.[14] The Act mandated, among other things, that advertising during children's programming be limited to a certain number of minutes per hour. The Act also stated that "the educational and informational needs of children" would be a criterion for evaluating a broadcaster's public interest obligations.[15] While the FCC could have taken relatively minimal regulatory action in response to the Act's passage, it instead chose to regulate in a way that went well beyond what was actually necessary to implement the Act. For example, the FCC issued regulations further defining the minimum requirements that would have to be met in order for a program to be considered "educational and informational programming for children." Among those minimum requirements were that: (a) the program would have to be aired during a certain time period, (b) the program would have to be at least one-half hour in duration, and (c) the program would have to be a regularly scheduled weekly program.[16] The FCC also developed guidelines that ensured automatic license renewals to broadcasters that aired

[11] Id.
[12] 47 U.S.C. § 336(d) (1999).
[13] For the purposes of this comment, I assume, without deciding, that the FCC has wide latitude to regulate most any aspect of broadcasting that it sees fit. In *National Broadcasting Co. v. United States*, 319 U.S. 190 (1943), the Supreme Court indicated that the Communications Act did not limit the power of the FCC to the engineering and technical aspects of regulation of communications. Quite the contrary, the Court implied that the FCC had very broad authority to regulate communications.
[14] *See* Action for Children's Television v. FCC, 756 F.2d 899 (D.C. Cir. 1985) (What the FCC actually did, to Congress' disdain, was to wisely avoid over regulation by targeting only those areas that truly needed administrative oversight.).
[15] 47 U.S.C. §303(a)-(b) (1999).
[16] 47 CFR §73.671 (1999).

a certain amount of children's programming, which again arguably reaches beyond the scope of the Act.[17]

Examples of over regulation can also be found where Congress does not directly aim at the public interest obligations of broadcast licensees, but rather aims at the general benefit of the public good. Nevertheless, the FCC has often used these statutes as springboards for regulations aimed directly at broadcast licensees. There is nothing wrong with this approach, as a practical matter, unless the FCC attempts to regulate beyond its authority or beyond what is simply prudent, or otherwise violates a constitutional protection. One example of this occurring is the FCC's EEO regulations that were first written in 1969.[18] Not surprisingly, since 1969 the EEO regulations and enforcement policies have become increasingly stringent and numerous. Just recently, the U.S. Court of Appeals for the D.C. Circuit declared certain aspects of the FCC's minority recruitment rules unconstitutional.[19] While I highly commend the FCC for being interested in equal opportunity and diversity matters, I wonder whether Congress had ever intended the FCC, in the name of "public interest, convenience, and necessity," to promulgate regulations in the area of minority recruitment.

My point is simply to say that, when Congress passes a law, the FCC should remain focused on Congress' intent and should resist the temptation to regulate beyond what is absolutely necessary, which I believe the FCC did in the above two examples. I point this out primarily because DTV is still in its infancy, and over regulation could do severe damage to the evolution of the technology. If this were to happen, the public interest in the emergence and proliferation of new technology would most certainly not be served.

4. THE FCC SHOULD LIMIT ITS PUBLIC INTEREST REGULATION TO CERTAIN CORE AREAS

4.1 Introduction: Five Types of Digital Television Programming

In the digital television era, I recognize five distinct types of DTV functionality:

(1) purely commercial programming: produced for a national audience; programs of mass appeal; regularly scheduled programs or specials produced for a national audience. Examples: The Practice, Law & Order, 60 Minutes, Saturday Night Live, Saturday morning cartoons, The Oscars Award show, Monday Night Football.

(2) local interest programming: produced for a local audience; programs with local mass appeal; Examples: local news shows, local telethons, locally produced specials of various kinds, programs featuring stories about local events or local people.

(3) special interest programming: programming as currently seen on public television stations; programming not driven by mass commercial appeal; may deal with controversial, political, or artistic material; serves a diverse audience base; often qualifies for non-profit status.

(4) national interest programming and services: disaster warnings, public service announcements, close-captioning, etc.

[17] Id.
[18] Nondiscrimination in Broadcast Employment, 18 F.C.C.2d 240 (1969).
[19] Lutheran Church-Missouri Synod v. FCC, 141 F.3d 344 (D.C. Cir. 1998), reh'g denied, 154 F.3d 487 (D.C. Cir. 1998).

(5) auxiliary services: paging, data-casting, internet-access capabilities, and other similar services that are distinct from and subordinate to the primary programming functions of broadcasters.

As discussed below, I believe the first two types need no FCC regulation (or as little as Congress will allow), while the third, fourth, and fifth type should be addressed, in varying degree, by the FCC.

4.2 Purely Commercial and Local Interest Programming: FCC Should Not Regulate Because the Marketplace Makes Regulation Unnecessary

Today, there is ever-increasing competition in the marketplace for purely commercial and local interest programming. Broadcasters are not only competing against other broadcasters, they are now competing against satellite services, the internet, the world wide web, newspapers, video rentals and sales, and many other sources of news and information. In order to have a competitive edge, broadcasters will be required to offer high quality programming that is tailored to the desires of the local communities being served. Also, because younger generations are now growing up on technology, they, on the whole, demand more in the way of useful information and resources than do their elders; thus, the average consumer's expectations regarding programming content are becoming more heightened over time. In addition, the average consumer's level of awareness about many issues has grown dramatically in the last several decades.[20] The public is being exposed to more, and is thus becoming more savvy and sophisticated than ever before, thanks in part to the emergence of new technology like digital television. Today's public does not need to be protected from complex or controversial issues in the name of the public interest. The adult public is certainly able to choose appropriate programming for itself without help from government and, with the advent of V-chip technology, parents will very soon be able to completely censor the viewing habits of their children at home.

That being said, the marketplace for purely commercial and local interest programming simply does not need the FCC's help to ensure that broadcasters will be responsive to the public interest. Further, with digital multi-casting, there is no longer the channel limitation that required the FCC to reserve spectrum space for public interest programming in the first place. With multi-casting, there is now spectrum space for virtually everyone. And, as long as there are children and parents in the world, there will be a market for children's programming, regardless of what the FCC or Congress may do or not do. However, realizing that Congress has already spoken in the area of children's programming via the Children's Television Act, I simply believe that the FCC should promulgate the minimal number of regulations possible in order to implement a narrowly tailored version of Congress' intent. And, in other areas where Congress has spoken, like political candidate equal airtime, I suggest the same approach: the FCC should narrowly interpret Congress' intent in promulgating regulations. Such a narrow FCC interpretation, as long as reasonable, should withstand judicial scrutiny. The Supreme Court has made clear that "the construction of a statute by those charged with its execution should be followed unless there are compelling indications that it is wrong, especially when Congress has refused to alter the administrative construction."[21] If Congress wants more, then let Congress say so via additional

[20] For example, consider how the public awareness of same-sex relationships has increased in recent years.
[21] Red Lion Broad. Co. v. FCC, 395 U.S. 367, 381 (1969).

legislation. In the meantime, the FCC would serve the public interest well by allowing DTV to emerge unencumbered, as much as possible, by unnecessary and ineffective regulation.

Should the FCC heed this advice, broadcasters are not foolish enough to disregard what their local communities want to see in the way of programming. Broadcasters are, after all, in a competitive market. Take local news programs as an example. In terms of satisfying the FCC's public interest requirements, a local news program is a broadcaster's best friend; for many Americans, local news programs are also the most interesting and relevant programs on the air. The local news program has been a staple of American life since its inception, and we all know that it will continue to be important to local communities, regardless of the FCC's public interest requirements. Further, other local programming of high quality will continue to exist, even absent the public interest regulations, as a tool for one broadcaster to compete against another. The emphasis, admittedly, will be only on the quality of the programming in order to win out over the competing broadcaster, and not on the elusive public interest. However, the public interest will be served as a natural consequence of broadcasters delivering the high quality programming that results from free market competition.

Further, while Congress has given the FCC authority to regulate in the area of public interest, this FCC authority should not be interpreted as a right to regulate the quality or substance of programming.[22] Any such interpretation would quickly clash with the broadcasters' rights to free speech under the First Amendment. In *Turner Broadcasting System, Inc. v. FCC*, the Supreme Court noted that "the FCC is well aware of the limited nature of its jurisdiction, having acknowledged that it 'has no authority and, in fact, is barred by the First Amendment and [47 U.S.C. § 326] from interfering with the free exercise of journalistic judgment.' (citation omitted) In particular, the FCC's oversight responsibilities do not grant it the power to ordain any particular type of programming that must be offered by broadcast stations; for although 'the Commission may inquire of licensees what they have done to determine the needs of the community they propose to serve, the Commission may not impose upon them its private notions of what the public ought to hear.' (citations omitted)"[23]

In summary, the FCC should acknowledge the effectiveness of the marketplace in serving and protecting the public interest in the areas of commercial and local interest programming. The FCC should also be cognizant of its inability to regulate program content. That being the case, it simply does not make sense for the FCC to continue regulation in this area unless absolutely mandated by Congress. I suggest that the FCC wash its hands of the idea that regulating commercial and local interest programming is either practicable, prudent, or in the public interest at all. Instead, the FCC should focus its energy and resources in those areas where the public interest truly lies: special interest programming, national interest programming, and, to some extent, auxiliary services.

[22] 47 U.S.C. § 326 (1999) ("Nothing in this chapter shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication.").
[23] Turner Broad. Sys., Inc. v. FCC, 512 U.S. 622, 650 (1994).

4.3 Special Interest Programming: FCC Should Regulate to Protect Public Broadcasting

Public broadcast stations ("PBS") have long been a vital part of the broadcasting landscape in America. These stations have diverse program offerings that simply can not be found on commercial stations. There is really no need for me here to go into depth about the virtues of PBS. Most of us are already aware of their immense value.

In its Final Report, the Gore Commission states that "public broadcasting will continue to be a vital link for many Americans who want access to high quality cultural, public affairs, children's, and educational programs."[24] It also recommended "carving out space on the spectrum for channels devoted specifically to noncommercial educational programming and services, and funding them in ways that will vastly expand the educational opportunities for all Americans, and particularly for those now underserved by information resources."[25] I agree wholeheartedly with the Gore Commission in its fundamental recognition of special interest programming as vital in the digital technology age. I would thus encourage the FCC to vigorously pursue regulations that will protect these programming offerings and enable them to make the transition to the digital era. No doubt, the transition will be costly, and PBS may need financial assistance to build the digital facilities necessary to survive. As the Gore Commission suggests, a few possible ways for funding the PBS transition to digital would be through "revenues from the auction of other spectrum, including the remainder of the analog spectrum; some (or all) of the fees from ancillary and supplementary services…; and a portion of the fees (the Gore Commission) recommend(s) implementing for the use of multiple commercial-driven broadcast channels by digital broadcasters."[26] Whatever the costs and whatever the means, we must ensure that public broadcast stations and educational stations enter the digital age as strong as ever and continue to thrive as a vital source of independent, high quality programming.

4.4 National Interest Programming and Services: FCC Should Strongly Regulate

There are many times when government has a duty to inform its citizens about issues of the day. These messages may take the form of Public Service Announcements (PSAs), disaster warnings, or national news updates. The topics may include, without limitation, international war updates, other important news updates, public health messages, weather warnings, and even public school closings. DTV provides many new possibilities for how this type of information can be delivered, and there is little question that this information is of utmost importance to the public interest and welfare.

Similarly, DTV presents many new possibilities for serving those Americans who are deaf or hard of hearing and that have been largely excluded from enjoying the full benefits of television; however, one essential prerequisite is that video programmers provide closed captioned programs. While closed captioning does exists today, it is not available for all programs and, when available, is often of very poor quality. Further, it is often not available for PSAs, public affairs programming, political programming, and other types of programming that can carry very important information. Fortunately, the FCC has authority over both video programmers and

[24] Final Report, Section III: Recommendations of the Advisory Committee, Recommendation 4a (December 18, 1998).
[25] Final Report, Section III: Recommendations of the Advisory Committee, Recommendation 4b (December 18, 1998).
[26] Id.

broadcasters in the area of closed captioning. First, Congress has set forth extensive requirements on closed captioning for video programmers and, in so doing, has given the FCC broad authority to regulate programmers in the area.[27] Second, under the FCC's public interest regulations, the FCC has wide latitude in ensuring that broadcasters take full advantage of DTV technology in delivering effective closed captioning to the handicapped. I urge the FCC to make closed captioning one of its very highest priorities, as the public interest could hardly be served better than by making DTV truly accessible to many currently disenfranchised viewers.

4.5 Auxiliary Services: FCC Should Regulate to the Extent Needed to Protect Spectrum Availability, Fund the Transition of Public Television to Digital, etc.

DTV licensees are required to pay the U.S. government a fee for any subscription auxiliary services it offers.[28] These fees are supposed to represent the approximate value of what the licensees would have paid had the spectrum been auctioned.[29] In late 1998, the FCC issued fairly comprehensive regulations in furtherance of Section 336, which, among other things, set the fee at "five percent of the gross revenues derived from all ancillary or supplementary services."[30]

The FCC's current fee structure may turn out to be adequate. Frankly, I believe it is too early to tell, and I do not pretend to have the answer as to what fee level or fee structure is best. I would only ask the FCC to stay attuned to developments in this area and to adjust the fees as needed. As auxiliary services become a more prominent part of the DTV landscape, I would also ask that the FCC keep a few considerations in mind. First, it is crucial that auxiliary services in no way interfere with the primary functions of DTV, as auxiliary services are, to some extent, getting a "free ride" on the coattails of DTV. On this score, I would agree with the Gore Commission that care should be taken to "ensure that the provision of ancillary and supplementary services not impinge upon the 9600 baud bandwidth currently set aside for captioning of digital programs."[31] I would go even further, however, and suggest that auxiliary services not be allowed to impinge upon any of the spectrum that is dedicated to any other type of programming or service that has a higher public interest priority. As a general rule, I believe virtually all other types of programming or services should have a higher priority because auxiliary services do not lie at the core of DTV's primary purpose. Second, I suggest that the FCC pursue action that would ensure that licensees do not use up their own allotted spectrum with massive offerings of auxiliary services. Again, it is too early to tell, but it may well be that auxiliary services turn out to be a very lucrative proposition for licensees. If so, some licensees may be tempted to stray from core programming and to devote a large portion of their spectrum to auxiliary services. This, in turn, would be detrimental to the public interest because it would translate into a lower quality of non-auxiliary DTV programming.

In essence, auxiliary services should be thought of as a business enterprise more so than as an endeavor for the public good. I do not have a problem with licensees making a profit by using their spectrum to offer auxiliary services to the consuming public. I do, however, believe that

[27] 47 U.S.C. § 613 (1999).
[28] 47 U.S.C. § 336(e)(1) (1999).
[29] 47 U.S.C. § 336(e)(2) (1999).
[30] 47 C.F.R. § 73.624 (1999).
[31] Final Report, Section III: Recommendations of the Advisory Committee, Recommendation 8 (December 18, 1998).

licensees' first and foremost duty is to offer the types of programming that lie at the heart of DTV: commercial programming, local interest programming, special interest programming, and national interest programming and services. The FCC's job is to make certain that the provision of auxiliary services by licensees does not interfere with the primary reasons the licensees were granted licenses in the first place.

5. CONCLUSION

The FCC has an enormous and vitally important duty in regulating the broadcast industry and injecting substance into the elusive public interest standard. There are an almost endless number of ways that the FCC can attempt to regulate in this area. Without doubt, Congress has delegated broad power to the FCC in the field of broadcasting, limited basically only by constitutional constraints and minimal Congressional restrictions. While this circumstance gives the FCC a wide range of alternatives in how to proceed, it also allows for a wide range of ways that the FCC can fail in its duties.

I urge the FCC to act sparingly and wisely in deciding when and how to regulate the broadcasting industry in the name of the public interest. There are certain primal public needs that should be at the top of the FCC's list, and I believe it is justifiable for the FCC to promulgate strong regulations in these areas. Some of these areas are: ensuring that DTV is accessible for the disabled; creating a regulatory scheme that strengthens public television and its ability to offer diverse, cultural, and enriching programs; and, ensuring an effective way to communicate disaster warnings and other important messages to the public.

Conversely, there are other areas where the FCC should regulate very little, if at all. Among these areas are purely commercial programming and local interest programming. In these areas, the FCC can do very little to ensure, primarily because of licensees' free speech rights, that the programs are of high quality or that they adequately serve the communities that are receiving the programs. The FCC should simply refrain from regulating in this area and should leave these concerns to the marketplace. Free market competition is the best way to ensure that local viewing communities receive the types of programming that they want and need. Admittedly, there will be some programming voids to be filled, as commercial and local interest programming will never adequately serve niche and educational markets. That, however, does not present a problem, as the FCC can fill these voids by making certain there exists a strong, independent public television network. The FCC can even be creative in how these public television networks are funded, whether by auxiliary services fees, by broadcast license fees, or by some other financial resource.

In essence, Congress has entrusted the FCC with creating the entire regulatory scheme that will largely determine the success or failure of DTV. It is crucial to remember that this technology is just now in its infancy, and the surest way to stifle it is through over regulation. For the sake of the public interest, I urge the FCC to ensure that over regulation does not occur so that DTV will continue to develop and thrive.